

**THIS DISPOSITION
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Hearing:
September 10, 2003

Mailed:
February 11, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dainichiseika Color & Chemicals Mfg. Co., Ltd.

Serial No. 76179365

Robert J. Kenney for Dainichiseika Color & Chemicals Mfg.
Co., Ltd.

Marc Leipzig, Trademark Examining Attorney, Law Office 115
(Tomas V. Vlcek, Managing Attorney).

Before Hanak, Holtzman and Rodgers, Administrative
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Dainichieseika Color & Chemicals Mfg. Co., Ltd.
(applicant) seeks to register CHROMOFINE in typed drawing
form for "organic and inorganic pigments used in plastics,
fibers, textiles, synthetic leather, rubber, stationery,
and paints." The intent-to-use application was filed on
December 12, 2000.

Citing Section 2(d) of the Trademark Act, the
Examining Attorney has refused registration on the basis
that applicant's mark, as applied to applicant's goods,

would be likely to cause confusion with the mark CHROMAFINE previously registered in typed drawing form for "printing inks." Registration No. 2,279,248. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs and were present at a hearing held on September 10, 2003.

To begin with, we note that applicant's mark CHROMOFINE and the cited mark CHROMAFINE are extremely similar in terms of visual appearance and pronunciation. Indeed, they differ by a single letter. While it is true that the prefixes of the two marks (CHROMO and CHROMA) have different connotations, we believe that purchasers would simply not notice these differences in connotations especially when both prefixes are combined with the same final word FINE. In short, we find that the marks are extremely similar.

Of course, this certainly does not end our likelihood of confusion analysis. Two entities can use extremely similar, indeed even identical marks, without any likelihood of confusion provided that the goods or services have little if any relationship. In an effort to show that applicant's goods and registrant's goods are related, the Examining Attorney relies simply upon twenty third-party registrations.

We have two problems with this evidence. First, it has been held that "in the absence of any evidence showing the extent of use of any of such marks or whether any of them are now in use, they [the third-party registrations] provide no basis for saying that the marks so registered have had, or may have, any effect at all on the public mind so as to have a bearing on likelihood of confusion." Smith Bros. Mfg. Co. v. Stone Mfg. Co., 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973)(original emphasis).

Second, even if we were to consider the third-party registrations made of record by the Examining Attorney, we note that the majority of them do not cover pigments, on the one hand, and printing inks, on the other hand. Rather, they cover pigments for use in the manufacture of various products including printing inks. In other words, the vast majority of the third-party registrations demonstrate that the same companies do not sell both printing inks and pigments to their purchasers. Instead, they sell pigments which can be used in the manufacture of a wide array of products, including printing inks.

In short, the vast majority of the third-party registrations do not demonstrate that the registrants sell printing inks and pigments to common purchasers. In this regard, this case presents a factual situation very similar

to that found in Electronic Design & Sales where the Court found no likelihood of confusion when the virtually identical marks EDS and E.D.S. were used on goods which were "not only in the same fields but also [directed to] some of the same companies," because there was no proof that the goods were directed to the same purchasers.

Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992).

One final comment is in order. There is no dispute that both pigments for use in a wide array of industrial products (applicant's goods) and printing inks (registrant's goods) are not consumer products. Rather, these products are purchased by professionals exercising at least some degree of sophistication. Our primary reviewing Court has made it clear that purchaser "sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care."

Electronic Design & Sales, 21 USPQ2d at 1392 (Fed. Cir. 1992).

In sum, given the fact that the Examining Attorney has failed to establish that there is any meaningful purchaser overlap involving applicant's goods and registrant's goods, and the additional fact that the purchasers of applicant's

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goods and registrant's goods are sophisticated, we find that there exists no likelihood of confusion.

Decision: The refusal to register is reversed.